

Statement of Chairman Charles E. Schumer
Committee on Rules and Administration
Hearing on
Examining the Filibuster: The Filibuster Today and Its Consequences.
May 19, 2010

The Rules Committee shall come to order. Good Morning. I would like to thank my friend, Ranking Member Bennett, and my other colleagues present for participating in this hearing. I especially want to thank Senator Byrd for his continuing interest and participation in these hearings. His decades of leadership and his unsurpassed knowledge of Senate rules and procedures have benefitted us all, and we are very fortunate that he will be joining us later in the hearing. I ask consent that he be permitted to read his opening statement when he arrives.

We have here as one of our distinguished witnesses the former Senator from Oklahoma and Republican whip, Don Nickles, who served for 24 years in this body. Welcome, Senator Nickles, and thank you for taking time to share your thoughts with us.

There's no former living Senator who can give us more insight into the evolution of the filibuster and the cloture rule than our first witness, former Vice President and Senator Walter Mondale. He was the 42nd Vice President of the United States and served two terms in the U.S. Senate representing Minnesota.

In early 1975, Senator Mondale, together with Senator Byrd, successfully led the bipartisan debate which resulted in amending Senate Rule XXII, the cloture rule, to reduce the number of Senators needed to invoke cloture. The Senate first determined it could change its own rules by a simple majority – voting three times to set that precedent. Reaction to that precedent, which was later rescinded, resulted in a compromise. The Senate agreed to move from two-thirds of the Senators present and voting to the current 60 vote threshold for cloture that exists today.

In 1977 Mr. Mondale as Vice President, serving also as President of the Senate, and our then-Majority Leader Robert Byrd played a crucial role in shutting down the post-cloture filibuster of a natural gas deregulation bill. This action became the main catalyst for efforts in 1979 to limit post-cloture debate time.

There is a great deal of debate between those who believe that under the Constitution a majority of the Senate can change its rules, and those who disagree. Today we will see a glimpse of the Senate at a time when it did face and vote on that very issue.

This is the second in the series of hearings by this committee to examine the filibuster. The purpose is to listen and learn so that we can later consider whether the Senate should make any changes in its rules and procedures and if so, which ones. I have not settled on, nor ruled out any course of action, but as Chairman of the Rules Committee, I believe we need to fully and fairly assess where the Senate is today and whether we can make it better. One thing is certain,

however – in recent years the escalating use of the filibuster has drastically changed the way the Senate works.

Our first hearing on April 22nd explored the history of the filibuster. We now focus on the filibuster today and its consequences – for the Senate; for all three branches of government; and ultimately, for the American people.

We learned in our first hearing that the use of the filibuster has reached unprecedented levels. This chart, prepared from facts supplied by the Congressional Research Service, shows that the use of cloture motions has escalated rapidly in recent Congresses. Cloture motion counts are useful because they represent a response to filibuster tactics – actual filibusters, threats or realistic expectations of them.

During the first period, from 1917 to 1971, there was an average of 1.1 cloture motions filed per year. The next period is from 1971 to 1993, when there was an average of 21 filibusters per year. In the period from 1993-2007, that number increased by almost a third – to an average of 37 cloture motions per year.

Then we come to the 110th and the beginning of the 111th congress. We are now averaging more than 70 cloture motions per year. That's an average of two per week when we're in session.

Before I call on the rest of my colleagues for their statements, I want to highlight a few statistics about where things stand today with our legislative, executive, and judicial branches and the filibuster.

LEGISLATIVE BRANCH

Not every bill that passes the House could or should pass the Senate. But as we know, Members of the House often complain that its bills stall out in the Senate, and the numbers indicate there's truth to that. According to statistics maintained by the Senate Library, there have been 400 bills passed by the House in this Congress that have not been considered by the Senate. Of those, 184 had passed by voice vote and another 149 passed with a majority of House Republicans voting yes on a roll call vote, indicating a high degree of bipartisan support.

EXECUTIVE BRANCH

The filibuster also is creating problems for the executive branch. For example, for fiscal year 2010, half of all non-defense spending – more than 290 billion dollars – was appropriated without legal authority because Congress hadn't reauthorized the programs.

Dozens of presidential appointments also are being delayed or blocked from floor consideration. Many of these were approved unanimously by both Democrats and Republicans in committee and are stuck on the executive calendar because of holds. That means executive agencies don't have the leadership and expertise to do their jobs well.

Key national priorities are also being undermined. Even nominees to important national security positions are unreasonably delayed by holds and filibuster threats in this Congress. This is dangerous at a time when we need a federal government using all its resources to fight terrorism and protect our country.

JUDICIAL BRANCH

Today 102 federal judgeships are vacant, a problem which has consequences for Americans from all walks of life.

President Obama has submitted nominations to fill 41 of those. More than half, 24, have been reported out of the Judiciary Committee, yet languish on the calendar. Of those, 20 were approved by the Judiciary Committee with bipartisan, often unanimous, support. What's holding them up? Too often, it's simply the threat of a filibuster by one or a few Senators.

It's true that the Senate increasingly scrutinizes judicial nominations. I myself opposed some of President Bush's nominations to the bench. However, at this point in George W. Bush's presidency, the Democratic-minority Senate had confirmed 52 Federal circuit and district court judges. But as of today, the Republican-minority Senate has approved only 20 of President Obama's, even when candidates had strong bipartisan committee support. Without enough judges to staff the federal judicial branch, businesses and individuals alike may feel pushed to give up or settle rather than wait for years for their day in court.

These are but a few examples of the consequences of the filibuster.

I hope that today's hearing helps to inform Members of this Committee, the Senate, and the public at large about the use of the filibuster today and how it affects our government and our nation. I look forward to listening to our witnesses, and now I'll turn to Ranking Member Bennett for his opening statement.